

Compliance Alert

Final Rules – 90 Day Waiting Period & Orientation Period

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Final regulations were released by the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (IRS) (The Departments) regarding the Affordable Care Act (ACA) 90-day waiting period rules, including the new one month "orientation period", which may be imposed prior to the start of the waiting period.

Background

In general, beginning with the first plan year of 2014, The ACA limits group health plan waiting periods to no more than 90 calendar days before coverage is effective for an otherwise eligible employee. In response to this rule, many employers have shortened existing waiting periods. In February, the Departments issued proposed rules introducing the right for an employer to impose a 1-month "orientation period" prior to the start of the waiting period. (Note that an exception to the 90 day rule also exists for variable hour and seasonal employees, if an employer implements the optional measurement period approach to defining full time employees.)

Purpose and Timing Requirements

The proposed rules allow employers to apply the orientation period to any plan year beginning in 2014. The final rules officially apply for plan years beginning on or after January 1, 2015.

According to the regulations, the orientation period is provided so "that an employer and employee will evaluate whether the employment situation is satisfactory for each party, and standard orientation and training processes will begin." There are no specific rules in the regulations that require the employer to implement some kind of formal training program to take advantage of the orientation period. However, employers using this approach should document it in existing HR policies and procedures.

The orientation period can be no longer than 1 calendar month beginning on the employee's start date. For example, if the employee's start date is May 3rd, the orientation period is allowed through June 2nd, and the waiting period must begin no later than June 3rd.

Interaction with ACA Employer Shared Responsibility Rules

The final rules clarify that compliance with the waiting period rules may not meet compliance under the §4980H employer shared responsibility rules. The timeframe requirements are slightly different.

To avoid possible penalties under the employer shared responsibility rules, coverage must be effective for full-time employees no later than 1st day of the 4th full calendar month from hire date. If an employer imposes a full 1-month orientation period plus a full 90-day waiting period, coverage may not actually begin until sometime into the 4th month, exposing the employer to possible 4980H penalties.

On the other hand, employers choosing to use a 1-month orientation period plus a waiting period of the 1st following 60 days or less, will always be in compliance with the shared responsibility rules, since coverage would be effective prior to the 1st day of the 4th full calendar month.

Employer Next Steps

For employers choosing to implement such orientation periods, plan eligibility rules will need to be updated accordingly. The orientation becomes a requirement for earning eligibility, and then the waiting period (e.g. 1st of the month following 60 days) would begin upon completion of such orientation period.

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